APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY **CASE NO. PUE000343**

For approval of generation facilities pursuant to Virginia Code § 56-580 D or, in the alternative, for approval of expenditures pursuant to Virginia Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2

and

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY **CASE NO. PUF000021**

For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction

REPORT OF DEBORAH V. ELLENBERG, CHIEF HEARING EXAMINER

February 2, 2001

On June 16, 2000, Virginia Electric and Power Company ("Virginia Power" or "the Company") filed an application with the Commission in which it proposes to reconfigure the generation units at the Possum Point Power Station by taking two existing oil-fired units (Units 1 and 2) out of service, converting two existing coal-fired units (Units 3 and 4) to natural gas, and constructing a new combined cycle generating unit ("the Project"). The Project is proposed to be operational in May 2003, and will increase Company-owned generating capacity by approximately 397 megawatts ("MW").[1] The new generating unit is expected to cost an estimated $280 to $300 million. Specifically, the Company requests: (1) approval under § 56-580 D of the Code of Virginia; and (2) a determination that § 56-234.3 does not require approval of the agreements necessary for the proposed synthetic lease financing, or in the alternative, that the Commission grant an exemption from § 56-234.3. The application also seeks a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2 should the Commission determine that that section is applicable. That application was docketed as Case No. PUE000343. Also on June 16,

[1]Units 1 and 2 have a combined rated capacity of 143 MW, Units 3 and 4 have a rated capacity of 322 MW, and the new unit is proposed to have a capacity of 540 MW.

2000, and related to the Project, the Company filed a Motion for Determination of Applicability of, or in the Alternative, for Exemption or Waiver from, Bidding Rules.

On July 5, 2000, Virginia Power filed another application related to the Project. In that application the Company sought: (1) authority from the Commission to participate in lease financing arrangements of approximately $300 million for construction, (2) a declaration that the Commission will not assert jurisdiction over the financing parties to the transaction, and (3) an exemption from, approval under, or determination that approval under § 56-234.3 is not required for the Company to enter into certain agreements in connection with the financing. The July 5 application also seeks approval under (i) Chapter 3 of Title 56 of the Code of Virginia, because the financing arrangements may be considered to create an evidence of indebtedness; (ii) Chapter 4 of Title 56 of the Virginia Code, because the transaction will involve jurisdictional contracts or arrangements between Virginia Power and a subsidiary of Dominion Energy, Inc., an affiliate; and (iii) Chapter 5 of Title 56 of the Code of Virginia, because Virginia Power proposes to transfer real property at Possum Point, by means of a ground lease, on which the new facility will be constructed and will be reacquiring the constructed facility and related real property through a sublease. That application was docketed as Case No. PUF000021.

On July 26, 2000, the Commission issued an Order Inviting Comments and Responses and Prescribing Notice in which it docketed the proceedings, identified preliminary issues presented in these cases, appointed a hearing examiner to make recommendations on those preliminary issues, and required public notice.

The preliminary issues presented by the applications that the Commission concluded should be first addressed included:

(1) Whether the Bidding Rules[2] are applicable to the Project, or in the alternative, if they do apply, whether the Commission should grant Virginia Power an exemption to these Rules.

(2) Whether the Commission should approve this Project exclusively under § 56-580 D of the Code of Virginia, or under §§ 56-234.3, and/or 56-265.2 as well.

(3) If § 56-234.3 of the Code of Virginia applies to this project, whether the Company should be granted an exemption from that provision, or approval under it to make "at risk" financial expenditures in association with the Project.

On August 21, 2000, Staff and the Company filed Comments addressing the issues outlined in the Commission's order. The Virginia Committee for Fair Utility Rates had filed Notices of Protest but did not file comments on the preliminary issues or protests in these cases. No requests for a hearing were made.

[2] 20 VAC 5-301-10 et seq.

On September 1, 2000, an Interim Report on Preliminary Issues was filed in which it was found that:

1. The Bidding Rules are applicable, but a waiver of those rules should not be granted and does not appear necessary in this case;

2. The Company should be directed to supplement its prefiled direct testimony with information on the alternatives bid in its January 1999 and December 1999 solicitations if relevant to this case. If not relevant, the Company should so advise the Commission in comments hereto;

3. If the recent solicitation is not relevant to consideration of market alternatives herein, the Company should be directed to issue a Request for Proposals on a parallel track to consideration of this Project;

4. The application should be evaluated pursuant to Virginia Code §§ 56-46, 56-234.3, 56-265.2, and 56-580 D;

5. The Company should file an affidavit and schedule of expected expenditures as described above with its comments to this Report; and

6. Virginia Power should be granted interim authority to undertake permitting and preliminary site work, and to make financial expenditures for the proposed Project at its own expense and risk subject to the Commission's review of the supporting affidavit.

On September 8, 2000, Virginia Power filed Comments taking exception to the findings in the September 1, 2000, report and also withdrew its request for approval of "at risk" financial expenditures.

On October 3, 2000, the Commission issued an Order in Case No. PUF000021. It recognized that the preliminary issues were pending decision but concluded that it was in the public interest to approve the Chapter 4-related aspect of the described transaction docketed in Case No. PUF000021, contingent upon the issuance of any necessary certificates of public convenience and necessity, authorizations, and approvals. It concluded that if it found:

> in these separate rulings that the plant should be built, with the proposed financing, then the affiliate arrangement proposed herein does not appear to be contrary to the public interest. If we find the proposed. . . mechanics of its financing, not to be in the public interest, the approval granted herein shall be modified accordingly, as provided by § 56-80 of the Code of Virginia.[3]

[3] *Application of Virginia Electric and Power Company, For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction,* Case No. PUF000021, Order at 4 (October 3, 2000) (Document Control Center No. 001010176).

The Commission therefore approved "[t]he request by Virginia Power for authority to enter into a financial transaction with an affiliate. . . pursuant to Chapter 4 of Title 56 of the Code of Virginia, contingent upon our subsequent issuance of all additional, required authorizations, approvals and certificates" but made clear that "[a]ll further aspects of this application, as discussed above, remain under review and subject to further orders of the Commission."[4]

The Commission issued an Order for Notice and Hearing on October 18, 2000. After consideration of the applications, Hearing Examiner Report and comments, and applicable statutes, the Commission concluded that the Bidding Rules do apply to the Project, but that no further bids need be solicited by the Company since it had conducted two unrestricted solicitations in the recent past. However, the Commission cautioned that it would further scrutinize the responses to those solicitations to consider whether these responses present better alternatives than the Possum Point Project.

The Commission also determined that the Project should be considered under all applicable statutes, and that §§ 56-234.3, -265.2, and –580 D of the Code of Virginia can, and should be, harmonized.

> Our regulation of the construction and operation of generating facilities now must consider all applicable statutes, including §§ 56-234.3, -265.2, and –580 D of the Code of Virginia. These respective statutes emphasize slightly different public interest criteria by which we must evaluate the construction and operation of generating units such as the Possum Point Project, but they are not in conflict.[5]

The Commission found no ruling was necessary on the issue of whether the Company should be granted approval to make "at risk" expenditures related to the Project, but noted that the Company appeared to reserve the right to request "at risk" approvals at a later date.

Finally, the Commission found consistent with the requirements of §§ 56-234.3 and –265.2 of the Code of Virginia, that notice should be provided and hearings should be held. Accordingly, public notice was required, a public hearing was scheduled, and a procedural schedule was established.

On November 17, 2000, the Commission issued another order in Case No. PUF000021. The Commission expressed concern about Virginia Power's ability to obtain and maintain control over the new facility at Possum Point from DEI Sub, a subsidiary of Dominion Energy, Inc. ("DEI"). Specifically, the Commission required Virginia Power to:

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[4] Id. at 5.

[5] *Application of Virginia Electric and Power Company, For approval of generation facilities pursuant to Virginia Code § 56-580 D or, in the alternative, for approval of expenditures pursuant to Virginia Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2 and Application of Virginia Electric and Power Company, For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction,* Order for Notice and Hearing at 9, Case No. PUE000343 and PUF000021 (October 18, 2000) (Document Control Center No. 001040095).

(1) take all actions necessary to ensure that it will have the right to acquire control of the New Facility through the Sublease upon completion of construction;

(2) reform the Sublease to the extent necessary to assure that Virginia Power can maintain, to the extent practicable, the same control of the New Facility as DEI Sub may enjoy under the Lease;

(3) take all steps necessary to obtain and assure the Company's continuing control over the New Facility under the Sublease as reformed, pending a subsequent order of the Commission; and

(4) obtain Commission authority before transferring control of the New Facility to any other entity.

The Commission also found that:

(1) the determination regarding whether DEI Sub or other parties to this transaction are public utilities requiring certificates of public convenience and necessity shall be considered as part of Case No. PUE000343;

(2) pending the resolution of the issue raised in condition (1) above, DEI Sub may not divest Virginia Power of control of the facility without Commission authorization to do so;

(3) the real property subject to the ground lease approved herein may only be used to accommodate construction of the New Facility;

(4) the approval granted herein is subject to further authorizations and conditions, and the issuance of appropriate certificates in Case No. PUE000343; and

(5) the approval granted herein does not decide the issue of whether the New Facility is needed by Virginia Power. The issue of need identified in condition (5) herein will be determined in Case No. PUE000343, as part of our determination made under § 56-234.3 of the Code of Virginia. (Footnote omitted.)

On January 8, 2001, Virginia Power and the Staff jointly filed a letter to advise the Commission of certain agreements reached by the Company and Staff which could significantly streamline the public hearing scheduled for January 16, 2001.[6] Specifically they agreed that all testimony and exhibits could be admitted into the record without the need for witnesses to appear and without cross-examination. They also agreed that the prefiled evidence supported the issuance of a certificate of public convenience and necessity for the proposed project, which includes the construction of a combined cycle unit at the Possum Point Power Station subject to certain conditions.

[6] Exhibit 2.

The case was heard as scheduled on January 16, 2001. Appearances were entered by William H. Chambliss, Esquire and Sherry H. Bridewell, Esquire, counsel for the Staff and James C. Dimitri, Esquire, counsel for the Company.

Proof of the notice of the applications was marked and admitted into the record. A copy of the transcript is filed with this report.

SUMMARY OF THE RECORD

The Company is seeking approval to reconfigure several existing units and to construct a new unit at the Possum Point Power Station, located in Prince William County. The Company's proposed Project would result in the retirement of the Company's Possum Point Units 1 and 2 which are oil-fired and have a combined capacity of 143 MW; conversion of Possum Point Units 3 and 4 from coal to natural gas which have a combined capacity of 322 MW; and the construction of a new 540 MW gas-fired combined cycle generating unit, Unit 6.[7] Unit 6 will consist of two gas turbines, two heat recovery steam generators (HRSGs), a steam turbine, and associated equipment. The conversion of Units 3 and 4 is expected to cost $14 million dollars and the new unit is expected to cost $280 to $300 million. The proposed Project will result in a net increase of 397 MW in the Company's generating capacity.

The Company presented testimony and an affidavit from E. Paul Hilton, Pamela F. Faggert, Thorald A. Evans,[8] Charles A. Stadelmeier, and Jeffrey L. Jones in support of its applications. Mr. Hilton provided an overview of the Project.[9] Detailed aspects of the Project are addressed in the prefiled testimonies of Pamela Faggert, who documents the environmental considerations which were major factors in developing the Project;[10] Thorald Evans, who described the development and construction of the Project;[11] Charles Stadelmeier, who addressed the need for generation capacity to meet customers' needs;[12] and Jeffrey Jones who offered testimony on other considered alternatives.[13]

The Project is part of a comprehensive plan to improve air quality and meet existing and proposed air emissions limitations in northern Virginia.[14] It is intended to respond to changing environmental standards in a cost-effective way that also enhances service reliability. Ms. Faggert confirmed that, as anticipated, the Virginia Department of Environmental Quality ("DEQ") was changing emission standards. She testified that:

> On September 29, 2000, the DEQ issued an air permit for the Possum Point Power Station. As anticipated, this permit requires that the Station meet a combined average emission rate of 0.15 pounds per million Btu's NO_x from all emission

[7] Virginia Power is not proposing any changes to Possum Point Unit 5, a 786 MW oil-fired unit.
[8] Director of the Project; Transcript 15.
[9] Exhibit EPH-4
[10] Exhibits PFF-3, PFF-5 and PFF-11.
[11] Exhibits TAE-6, TAE-8.
[12] Exhibit CAS-7.
[13] Exhibits JLJ-9 and 10 (proprietary).
[14] Exhibits EPH-4 and PFF-5.

> sources at the Station during the five-month (May-September) ozone season. This permit applies to existing and new generation at Possum Point, such that the combined average emission rate cannot be exceeded.[15]

She reported that the new emissions standard takes effect in 2003, and that the average emissions from the existing facilities at Possum Point exceed the new rate. She added that the coal-burning Units 3 and 4 far exceed the new level. She verified that:

> Compliance with the new permit is based on the installation of the proposed Possum Point Unit 6 combined cycle unit, shutting down Units 1 and 2, and converting Units 3 and 4 from coal to natural gas. These changes will enable the facility to meet the overall limit of 0.15 pounds per million Btu's NO_x from all emission sources.[16]

Staff offered the testimony of Cody D. Walker, Lawrence T. Oliver, and Jarilaos Stavrou. Staff recommends that the Commission issue a certificate of public convenience and necessity and approve the proposed Project under certain conditions. In prefiled testimony Mr. Walker addressed the need for the Project, the impact on reserve margins in the Company's control area, alternatives to the Project, the results of the DEQ review, and general public interest concerns.[17] Mr. Oliver addressed the Company's plans for financing the Project, and commented on the redrafted sublease and memorandum of understanding.[18] Mr. Stavrou addressed the method used by the Company to forecast load growth and capacity needs, and the economic benefits that might accrue to northern Virginia as a result of the Project's expected contribution to meet environmental standards.[19] Mr. Stavrou also addressed the impact of this Project on Virginia Power's market power, stating that:

> [f]rom a practical point of view, the Company already controls so much capacity that a net gain of about 400 MW seems rather inconsequential. According to its 2000 resource plan, the Company will have 14,044 MW installed capacity in 2000 and will have a total summer capability of 18,017 MW. To summarize, it seems that 400 MW of additional generating capacity would not much affect the Company's market position by increasing, or, if the Project is denied, decreasing any market power that it already might have.[20]

Finally, Staff did not oppose Virginia Power's request for a finding that the financing entities involved in the Project are not subject to jurisdiction as public utilities based on and limited to the facts of this particular case and asked the Commission to find that the stipulations regarding DEI Sub and the Grantor Trust[21] participating in the financing regarding the new unit be deemed to have no precedential effect in any subsequent or separately docketed proceeding.[22]

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[15] Exhibit PFF-11, at 2.
[16] Id.
[17] Exhibit CDW-12.
[18] Exhibit LTO-13.
[19] Exhibit JS-14.
[20] Id. at 8.
[21] Dominion Energy, Inc. ('DEI") is an affiliate of Virginia Power. DEI Sub is a subsidiary of DEI created to lease the new facility from the lessor and sublease it to Virginia Power upon completion of the construction.
[22] Exhibit 2, Transcript 7.

DISCUSSION

The Commission has traditionally considered proposed generation facilities pursuant to Virginia Code §§ 56-46.1, -234.3 and -265.2. The Commission has reviewed the need for the facility, environmental impacts of the proposed facilities, the effect of the facility on economic development in Virginia, the effect of the facilities on service reliability, costs, alternatives and the public interest under those statutes. Virginia Code § 56.234.3 requires that:

> [p]rior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor in relation to its projected forecast of programs of operation.

That statute requires the Commission to determine that the construction of a proposed project is "necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates."

Section 56-265.2 of the Code provides that "[i]t shall be unlawful for any public utility to construct. . .any facilities for use in public utility service. . .without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege." Section 56-265.2 thus requires a general assessment of the "public convenience and necessity" which encompasses need, reliability, environmental concerns, economics, and more. The Commission also has held that other criteria must be considered, including:

> cost estimates, choice of technology, construction plans and proposed manner of carrying out the project are reasonable; and that there are no suitable alternatives to the proposed construction, such as conservation and load management, upgrading existing units, or obtaining the necessary power from resources other than the utility's own facilities.[23]

Recently, the Commission has considered the level of Virginia Power's ownership of generation in its control area.[24]

Virginia Code § 56-46.1 requires the Commission to "give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact" and, additionally, the Commission "(i) may consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility."

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[23] *Application of Virginia Electric and Power Company*, Case No. PUE860058, (the "*Chesterfield 7* case"), 1987 S.C.C. Ann. Rep. 262.

[24] *Application of Virginia Electric and Power Company*, Case Nos. PUE980462 (the "*Remington* case") and PUE000009 (the "Ladysmith case").

Section 56-580 D of the Code also now requires the Commission to find that the proposed facility will have no material adverse effect on reliability of electric service and is not otherwise contrary to the public interest. It provides:

> The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

That statute requires the Commission to consider the effect of the facilities on the environment and establish such conditions as may be desirable or necessary to minimize any adverse environmental impacts. Thus, the Commission must consider need, alternatives, the impact on the environment, service reliability, and the potential effect of the proposed capacity on the transition to a competitive market. The Commission may, and has, included consideration of the effects of the proposed facility on economic development.

The Company maintains that the Project is necessary to improve air quality and to meet existing and proposed air limitations in northern Virginia. It also asserts that the Project is needed to serve its load and maintain voltage stability in northern Virginia.

Mr. Walker testified that continued load growth in the service territory and the need to maintain adequate reserve margins are expected to require additional generating resources. He observed that there are a number of competitive power producers that have announced plans to add capacity in Virginia Power's control area, but Commission approval to construct those facilities has not yet been sought, so there is a significant degree of uncertainty with respect to the amount of load that might be served from competitive suppliers. [25]

Mr. Walker also affirmed the Company's testimony that the Project is unlikely to impact base rates due to non-fuel rate caps in effect potentially through July 2007, but he noted that the Project may impact fuel costs paid by retail consumers through a fuel factor. The Company's analysis indicates that annual fuel costs will increase by approximately $15 million in 2004 and 2005 and approximately $19 million in 2006 and 2007, a percentage increase of 1.4 to 1.7 percent.[26] Mr. Walker expressed reservations about the Company's analyses of alternative environmental compliance strategies, and coupled with uncertainty over natural gas cost estimates, he determined that a conclusion on how fuel costs will be impacted is difficult.[27]

[25] Exhibit CDW-12, at 14.
[26] Id.
[27] Id. at 16.

Mr. Walker further reported that DEQ coordinated a review of the Project and noted that the Project is unlikely to have significant effects on transportation, forest resources, health issues and geology features, provided the recommendations set forth in the DEQ review are met, including the following:

- A review of the National Wetlands Inventory map should be performed, and a site delineation should be conducted in any suspect wetland areas prior to project construction to determine the absence or location, extent or type of wetlands present on the site. Upon receipt of such information, the DEQ will determine whether certain permits will be required for construction of the project.

- DEQ also recommends that the number of stream and wetland impacts be avoided to the maximum extent practicable. For unavoidable impacts, DEQ encourages the following practices to minimize impacts to wetlands and waterways: operation of machinery and construction vehicles outside of stream-beds and wetlands; use of directional drilling from upland locations for the installation of utilities, the preservation and redistribution of the top 12 inches of trench material removed from a wetland for use as a wetland seed bank and root stock in the excavated area, and the use of synthetic mats when in-stream work is unavoidable.

- All solid wastes generated at the site should be reduced at the source, re-used, or recycled. All hazardous wastes should be minimized.

- In general, the use of herbicides or pesticides for landscape maintenance should be done in accordance with principles of integrated pest management. The least toxic pesticides that are effective in controlling the target species should be used.

- The Chesapeake Bay Local Assistance Department recommends that any Commission approval be conditioned upon a requirement that Virginia Power comply with requirements of the Chesapeake Bay Preservation Act.

- The Department of Game and Inland Fisheries recommends that the applicant continue to coordinate with the agency in the future to determine additional nesting sites of the federally threatened bald eagle near the Possum Point power plant.

The DEQ also noted that a possible settlement between the U.S. Environmental Protection Agency, the State of New York, the U.S. Justice Department, and the Company had been announced and that there was a possibility that emissions reductions resulting from the settlement could not be used to "net out" more rigorous state air permitting requirements.[28]

[28] Id. at 21-22

In conclusion, Mr. Walker opined that the Project could increase costs to ratepayers and possibly result in increased total NO_x emissions when compared to other compliance alternatives, but will provide additional capacity in the northern Virginia region during a period when actual reserve margins have been declining, provide other reliability related benefits through voltage support and enhanced transmission capability, and produce substantial reductions in air emissions. Mr. Walker testified that the potential cost increases that may be borne by the ratepayers may be more than offset by increased reliability.[29] He agrees that the Project is consistent with the overall public interest and recommends approval conditioned on compliance with the recommendations made in the DEQ coordinated review.[30] The Company agrees with those conditions, and I also find them to be appropriate.

Mr. Oliver filed testimony on the plans for financing the Project. He reported that on November 17, 2000, the Commission authorized the Company to execute the synthetic lease transaction contingent upon a number of conditions, including that the Company amend the sublease to the extent necessary to assure that Virginia Power can obtain and maintain control of the new facility, to the extent practicable, comparable to the controls obtained by DEI Sub under the lease.

Mr. Oliver confirmed that on December 4, 2000, a copy of the Company's reformed sublease agreement with DEI Sub was delivered to Staff. He testified that additional modifications were delivered on December 20, 2000.[31] Mr. Oliver recommended that any certificate granted should also provide that if Virginia Power does not obtain or maintain control of the new facility, except as may be provided by the Commission in response to the Company's Functional Separation Plan, the certificate should sunset or expire, and further authority regarding the disposition of the new facility would have to be requested from the Commission.[32] That condition is also reasonable and was not opposed by Virginia Power.

Finally, Virginia Power requested that the Commission make a finding that the lessor under the synthetic lease financing for the Project (a Grantor Trust formed to construct and own the new facility and lease it to the sublessor) and the sublessor, DEI Sub, in the synthetic lease transaction be determined not to be public utilities subject to Commission jurisdiction. The Commission deferred action on this issue and referred it to this proceeding for resolution.[33]

As explained in the application and discovery in the financing proceeding, these two entities are vehicles created solely for financing construction of the new facility, and as proposed, the only entity that will be operating the new facility to generate electricity as a public utility will be Virginia Power, which will have the sole right to use the new facility under its sublease from the sublessor.[34] Moreover, as discussed in Mr. Oliver's testimony, revisions were made to the transaction documentation that addressed Staff's concerns regarding Virginia Power's control over the new

[29] Id. at 22.
[30] Id. at 23.
[31] Exhibit LTO-13, at 8.
[32] Id. at 9.
[33] *Application of Virginia Electric and Power Company, For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction,* Case No. PUF000021, Order (November 17, 2000).
[34] Transcript 7.

facility and Virginia Power has agreed above to an additional condition assuring that the new facility cannot be operated by anyone other than Virginia Power unless the Commission approves. Finally, a finding of nonjurisdiction with respect to these two financing vehicles is integral to the financing. The Staff did not address these issues in its testimony but does not oppose the requested findings of nonjurisdiction, based on and limited to the facts of this case.[35] The Company and Staff further agree that such a finding in this case shall be deemed to have no precedential effect in any subsequent, separately docketed proceedings.[36] I find that such a finding is reasonable and supported by the record in this case.

FINDINGS AND RECOMMENDATIONS

Based on the evidence, I find that:

1. The proposed Possum Point Project as more particularly described in the June 16, 2000 application, is in the public interest and a certificate of public convenience and necessity should be issued subject to compliance with all recommendations set forth in the DEQ coordinated review, including the following conditions:

> (a) A review of the National Wetlands Inventory map should be performed, and a site delineation should be conducted in any suspect wetland areas prior to project construction to determine the absence or location, extent or type of wetlands present on the site. Upon receipt of such information, the DEQ will determine whether certain permits will be required for construction of the project;
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> (b) As recommended by DEQ, the number of stream and wetland impacts should be avoided to the maximum extent practicable. For unavoidable impacts, the following practices should be utilized to minimize impacts to wetlands and waterways: operation of machinery and construction vehicles outside of the stream-beds and wetlands, use of directional drilling from upland locations for the installation of utilities; the preservation and redistribution of the top 12 inches of trench material removed from a wetland for use as a wetland seed bank and root stock in the excavated area, and the use of synthetic mats when in-stream work is unavoidable;
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> (c) All solid wastes generated at the site should be reduced at the source, re-used, or recycled. All hazardous wastes should be minimized;
>
> (d) In general, the use of herbicides or pesticides for landscape maintenance should be done in accordance with principles of integrated pest management. The least toxic pesticides that are effective in controlling the target species should be used;

[35] Id.
[36] Exhibit 2, Transcript 7 and 11.

(e) As recommended by the Chesapeake Bay Local Assistance Department any Commission approval should be conditioned upon a requirement that Virginia Power comply with requirements of the Chesapeake Bay Preservation Act;

(f) As recommended by the Department of Game and Inland Fisheries, Virginia Power should continue to coordinate with that agency in the future to determine additional nesting sites of the federally threatened bald eagle near the Possum Point Power Station;

2. If Virginia Power does not obtain or maintain control of the new facility, except as may be provided by the Commission in response to the Company's Functional Separation Plan. The certificate recommended herein would sunset or expire, and further authority regarding the disposition of the new facility would have to be requested from the Commission; and

3. The Lessor under the synthetic lease financing for the Project and the Sublessor as described more fully above should be determined not to be public utilities subject to Commission jurisdiction based on and limited to the facts of this case.

I therefore ***RECOMMEND*** that the Commission enter an order that:

1. ***ADOPTS*** the findings in this Report;

2. ***GRANTS*** the Company's application for a certificate of public convenience and necessity for the Possum Point Project pursuant to Virginia Code §§ 56-46.1, 56-234.3, 56-265.2, and 56-580 D, and related provisions of Title 56 as conditioned herein; and

3. ***DISMISSES*** this case from the Commission's docket of active cases, upon issuance of the required certificates.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within seven (7) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Deborah V. Ellenberg
Chief Hearing Examiner